IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.822 OF 2002

Ganpat Bayaji Shirke ...Appellant
Vs.
The State of Maharashtra ...Respondent

Mr. S.V. Oak for the Appellant
Mr. K.K.Tated, A.G.P for the Respondent

CORAM: SHRI D.G.DESHPANDE &
SMT. ROSHAN DALVI, JJ.
DATED: 20TH DECEMBER, 2006

JUDGMENT (PER SMT. ROSHAN DALVI, J.)

1. This Appeal is filed to challenge the judgment dated 15th June, 2001 of the II Additional District Judge, Kolhapur in Land Acquisition Reference No.5 of 1999.

2. The main point of contention is the compensation granted to the Appellant by the Reference Court in respect of 100 Alphonso Mango trees/grafts. The ownership of these trees is not disputed. That has been the finding in the affirmative given by the Reference Court. There is a similar finding with reference to 4 Raival mango trees, 8 teak trees and 40 Nilgiri (Eucalyptus) trees also. The Land Reference

Court has granted Rs.1,00,000/- to the Appellant in respect of these mango trees/grafts. The total amount granted in respect of these trees is Rs.1,05,000/-. This was the enhanced compensation from the compensation of Rs.17500/- granted by the SLAO taking into consideration that those trees/grafts have no fruit yielding capacity and consequently he determined compensation payable at the rate of Rs.144/- per mango tree.

3. The Appellant has claimed Rs.50,00,000/- for these 100 mango trees/grafts. It is his contention that these mango trees/grafts were planted in 1988, and on the date of the notification issued in 1996 the trees/grafts were around 8 years old. It is his case that the commercial crop could be harvested from each tree after completion of 5 years from its sowing and would continue for decades. He therefore, contends that these trees have very large fruit yielding capacity. He therefore, contends that each tree would be worth Rs.50,000/- by the fact that it would produce 1000 to 1500 mangoes each year.

4. Under Clause 3(a) of the Land Acquisition Act “Land” includes benefits that arise out of the land and things attached to the earth which are permanently fastened with anything so attached. Growing trees, therefore, are included

in the expression “Land”.

5. In Section 3 of the Transfer of Property Act “things attached to the earth” are inter alia rooted to the earth as in the case of trees and shrubs. Consequently anything attached to the earth is treated as immovable property there under. Consequently when the trees remain as they are on the land they are immovable property.

6. A similar definition of immovable property in the General Clauses Act shows land, benefits arising out of land and things attached to the earth as included therein.

7. It is, therefore, seen that the trees have to be valued as immovable property. The valuation must therefore, be as on the date of notification issued by the Government. The notification is issued in 1998. The trees/grafts were then 8 years old. They were full blown/grown fruit bearing mango trees. As held in the case of Hans Raj Sharma Vs. Collector, Land Acquisition, (2005) 1 Supreme Court Cases, 553 the question of compensation for benefits arising out of things attached to the earth, being the trees would be within the jurisdiction of the Reference Court. In that case since the compensation for such benefits with regard to the trees on the land acquired was not considered by the Courts below,

the Supreme Court remanded the matter for ascertainment of such claim.

8. The fact that compensation is payable for these trees/grafts is not disputed in this case. Only the quantum of compensation is disputed. In the case of Assistant Commissioner-cum-Land Acquisition Officer Bellary Vs. S.T. Pompanna Shetty (2005) 9 Supreme Court Cases 662, four separate and distinct propositions of Law with regard to the determination of compensation for fruit growing trees is laid down:

(i) The determination of compensation has to be on the basis of yield of the crop of old grown up fruit bearing trees.

(ii) The nearest correct market value as on the date of the notification under Section 4(i) of the LA Act is to be ascertained.

(iii) A multiplier of 10 years capitalisation is a reasonable multiplier to be applied.

(iv) The amount of expenses of cultivation may be deducted. However, deduction of 1/3rd of the

amount as cultivation cost or 50% (½) of said amount is not proper.

9. The Appellant has accepted the compensation granted in respect of the land as well as other trees and additional compensation. The Appellant has 40 Eucalyptus trees, 8 teak trees, 1 Raival mango tree and 6 other trees. In the case of State of Gujarat Vs. Govind Mamaiya & Ors. (2005) 10 Supreme Court Cases, 141 the compensation for Eucalyptus trees has to be held to be Rs.120/- per tree.

10. In this case, the Appellant has not led specific evidence with regard to the extent of the crop harvested in the year of the notification and the rate at which it was sold. The land of the Appellant is in Kolhapur District. The amount claimed by the Appellant places the rate of sale of each mango, (out of approximate a 1000-1500 mangoes), grown on the 100 trees of the Appellant, in the range of Rs.40/- to Rs.50/-. This computation cannot be allowed in view of the total lack of any evidence in that behalf either for the number of mangoes on each tree or the price thereof. The Appellant has not shown any such sale yielding such net profit. The Appellant has also not shown any cost incurred for fertilizers etc. which could increase his yield or enhance the quality of the produce. However, the fact remains that the number of

trees claimed by the Appellant has not been disputed, denied or challenged. It is a known fact that the rate claimed by the Appellant is for the very best export quality mangoes. Such mangoes are grown in Ratnagiri and other coastal Districts. The quality of mangoes, and accordingly its price, in the interior area of the Country progressively decreases. The crop in the Appellant's District is not known for its quality. It is common knowledge, of which judicial notice is required to be taken, that the price obtained by the owners of orchards is far less than the retail market price and that all the fruits of the orchards are taken over by the Wholesalers from the owners at a fixed rate.

11. The trial Court has computed a reasonable price for the Appellant's trees/grafts at Rs.1,00,000/- in 1996. On a multiplier of 10, the Appellant should be entitled to a compensation of Rs.10,00,000/- . Deducting the cultivation cost of 20% as laid down in Pompanna Shetty's case supra, the amount payable to the Appellant would come to Rs.8,00,000/- . This is computed on the basis of a lump sum payment to which the Appellant would be entitled as the owner of the trees/grafts for his average yield expected of mangoes in Kolhapur District being taken over by wholesalers, in the absence of any other evidence showing higher yield or direct sale in the market.

12. Hence, the rate claimed by the Appellant cannot be granted. We deem it fit to only modify the trial Court's computation reasonably made as per the guidelines in Pomanna Shetty's case supra.

13. Consequently the Appeal is partly allowed. The Compensation for 100 Mango Trees/grafts on the Appellant's land is fixed at Rs.8,00,000/- . The Appeal is allowed to that extent. The rest of the claim for compensation remains unaltered.

(SMT.ROSHAN DALVI, J.) **(SHRI. D.G.DESHPANDE, J.)**